

## The Search for an Equitable Approach to Mobile Home Taxation

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## COMMENT

### THE SEARCH FOR AN EQUITABLE APPROACH TO MOBILE HOME TAXATION

#### INTRODUCTION

During the last decade mobile homes have made an enormous impact upon the housing market. Of 11.4 million new one-family units produced in the United States in the 1960's, 18.1 per cent were mobile homes. Even these figures, however, do not reveal the importance of the mobile. The mobile home accounted for only 8.4 per cent of the new single-family housing units constructed in 1961. By 1965, mobiles comprised 18.3 per cent of this market, and by 1969 mobile homes represented 33.7 per cent of all new one-family dwellings.<sup>1</sup> Moreover, in 1970, mobile homes made up 95 per cent of all single-family homes sold for less than \$15,000; 72 per cent of those sold for less than \$20,000; 61 per cent of all those sold for less than \$25,000; and 45 per cent of the total number of single-family units sold.<sup>2</sup>

The size of the mobile unit has increased along with its popularity. In 1961, 98.5 per cent of all mobiles produced were 10 feet wide; correspondingly, 82.2 per cent were 50 to 59 feet in length.<sup>3</sup> Thus, the floor space of most 1961 models was approximately 500 to 590 square feet. By 1970, 99.2 per cent of all constructed mobile homes were at least 12 feet wide, 20.6 per cent being wider. In addition, 78.6 per cent were 60 to 70 feet in length. The average mobile home constructed in 1971 measured 12 feet by 64 feet, with a living area of 732 square feet.<sup>4</sup>

It is easy to speculate why the mobile home has experienced such growing popularity. The price per square foot has declined from \$10.75 in 1961 to \$8.75 per square foot in 1970.<sup>5</sup> At the same time, the cost of a conventional home has increased to \$16 per square foot. This dif-

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1. F. BAIR, *MOBILE HOMES AND THE GENERAL HOUSING SUPPLY* 3 (1970).

2. U.S. DEPT OF COMMERCE, *CONVENTIONAL HOMES—CONSTRUCTION REPORTS C-25-70-Q4* (1971).

3. F. BAIR, *supra* note 1, at 5.

4. Mobile Homes Manufacturers Ass'n, *Flash Facts* 3, June, 1971.

5. Mayer, *Mobile Homes Move Into The Breach*, *FORTUNE*, March, 1970, at 144.

ference is reflected in the comparative costs: while the average mobile home sold for \$6,110 in 1970, the median single-family conventional house was priced at \$26,200, including land.<sup>6</sup> Because of the substantial difference in their prices, the down payments required for the two types of homes are quite disparate. Based on a 20 per cent down payment the mobile home purchaser paid an average down payment of \$1,222; the corresponding conventional house purchaser paid \$5,240 down on his new home. Many people, especially young married couples, simply do not have the down payment required for a conventional home. For these persons the mobile home provides a safe and decent alternative—probably a more spacious alternative—to apartment living.

In addition, the American of the 1970's finds himself a much more mobile being than his predecessor. Job demands, investment opportunities and personal desires cause the modern American to switch domiciles often, and correspondingly, to feel less rooted to any particular home, neighborhood or city. Since the mobile home is transportable, the modern American can feel that if a change of environment is indicated, he can take his mobile home with him. Also, the individual who simply anticipates a possible change in location in the not-too-distant future may feel considerably more secure assuming a seven-year mortgage, the usual term on a mobile home, than a twenty or thirty-year mortgage on a conventional house. If the mobile home owner desires to change residences, the seven-year mortgage will be more easily paid off or assumed by a prospective buyer than will the twenty-year mortgage. Of course, he may decide to take his home and his remaining mortgage payments with him.

Because of its low cost and/or its mobility, the mobile home appeals primarily to young families—the group of persons most desirous of decent housing. Most current figures reveal that 49.4 per cent of the heads of all mobile home households are thirty-five years of age or less. These families generally have less children, especially children of school age, than their conventionally housed counterparts. The median mobile home family has 2.49 persons; the national median is 2.85 persons per family.<sup>7</sup> In addition, only 27 per cent of mobile home families had children of school age, that is, between six and eighteen years of age. Moreover, more recent statistics based on regional surveys show the same small ratio of school age children per mobile home. A study conducted by

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6. Mobile Homes Manufacturers Ass'n, *supra* note 4.

7. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, HOUSING SURVEYS—PARTS 1 and 2, *Occupants of New Housing Units; Mobile Homes and the Housing Supply* 66-67 (1968).

the Michigan Municipal League found that in Macomb County, Michigan, while mobile homes average .52 children per unit, the average dwelling unit contains 1.7 children.<sup>8</sup> A survey conducted throughout New England concludes:

Households without children are the most common mobile home dwellers. . . . Mobile homes, with their modern plumbing, appliances and new furnishings, fulfill the housing expectations of some newly married couples much better than the older homes they could afford.<sup>9</sup>

The increase in the number of mobile home households in the United States has elicited much interest as to the proper way to tax the mobile home. Generally, there are four types of taxes imposed upon the owner of the mobile home. These are: a real property tax, a personal property tax, a license fee and a privilege or use tax. While most states impose only one of the above taxes upon the mobile home dweller, some states levy a combination of two or more such taxes upon him. The purposes of this comment are to examine these various approaches to mobile home taxation and to demonstrate that the privilege tax is the most feasible of these approaches.

More specifically, this comment will indicate problems associated with three of the above taxes. The mobile home is not "real property," and therefore the imposition of a real property tax upon it is unsound. In addition, the methods used to compute and collect the personal property tax are ill-suited to an efficient mobile home taxation system. Finally, the license fee approach often discriminates against the conventional home owner and in favor of the mobile home owner by imposing a miniscule tax upon the mobile home. None of the above problems is found in the properly drafted privilege tax statute. It is this lack of defects, rather than any inherent suitability, which makes the privilege tax approach the most effective approach to mobile home taxation.

#### OVERVIEW OF MOBILE HOME TAXATION STATUTES

Classifying the statutory tax approaches to mobile homes presents several problems. First, there are so many approaches enunciated by the various state statutes that accurate classification demands that such approaches be placed into many general categories. In addition, the large increase in the number of mobile home dwellers has provoked much debate in the state legislatures as to the proper method to tax mobile

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8. R. Hegel, *Mobile Home Zoning, Building And Site Regulations, and Taxation—Implications for Michigan Municipalities* 51, July 1970.

9. Greenwald, *Mobile Homes in New England*, *NEW ENGLAND ECONOMIC REV.*, May/June 1970, at 6.

homes; such debate has produced many recent changes in the law. Thus, any current survey runs the risk of being quickly outdated. Nevertheless, a classification is beneficial to a proper understanding of mobile home taxation.

Currently, nine states place a special privilege or use tax on mobile homes.<sup>10</sup> Nine states impose a license fee on the mobile home unrelated to its value,<sup>11</sup> while five states levy an *ad valorem* license fee on the home.<sup>12</sup> Six states tax the mobile home as real property.<sup>13</sup> Ten states subject the mobile home to personal property taxation, three by way of a specific state statute,<sup>14</sup> the others by way of implication from general

10. *Colorado*: COLO. REV. STAT. ANN. §§ 13-3-4(f), 13-3-5 (16 & 17) (Supp. 1969) (specific ownership tax of 2.30 percent, sliding scale to tenth year at .85 percent; \$25 minimum); *Illinois*: ILL. ANN. STAT. ch. 111½, § 725 (1972) (privilege tax of 10 to 15 cents per square foot of floor space); *Iowa*: IOWA CODE ANN. § 1350.22 (Supp. 1971) (semi-annual tax of 10 cents per square foot for first five years, 90 per cent of the above for the 6th-9th years, and 80 per cent of the above thereafter); *Minnesota*: MINN. STAT. ANN. §§ 273.13(3) (Class 2A), 168.012 (9)(a)(b) (Supp. 1970) (regular property tax rate; home assessed at 10 per cent of its value, down to 5½ per cent if 4 years and older; minimum assessment of \$2,000); *North Dakota*: N.D. CENT. CODE, § 57-55-04 (Supp. 1971); *Ohio*: OHIO REV. CODE ANN. § 4503.06 (Supp. 1970) (based on purchase price with a depreciation scale; minimum of \$36); *South Dakota*: S.D. COMPILED LAWS ANN. §§ 10-9-9, 10-9-14 (1967) (taxed at same rate as personal property); *Washington*: WASH. REV. CODE ANN. 82.50-2 (Supp. 1971) (annual excise tax of 2 per cent of market value with a \$2.00 minimum); *Wyoming*: WYO. STAT. ANN. § 39-311 (c)(i) (Supp. 1971) (3 per cent use tax).

11. *Alaska*: ALASKA STAT. § 28.10.200(6) (1970) (\$4.00 annually); *Kentucky*: KY. REV. STAT. § 186.270 (1962); *Louisiana*: LA. REV. STAT. § 47:462 (1970); *Massachusetts*: MASS. GEN. LAWS ANN. ch. 140, § 32G (Supp. 1971) (\$6.00 monthly fee); *Michigan*: MICH. STAT. ANN. § 5.278(71) (1971) (\$3.00 monthly fee); *New Jersey*: N.J. STAT. ANN. §§ 40:52-1-d, 40:52-2 (Supp. 1971); *New Mexico*: N.M. STAT. ANN. §§ 64-3-2(g), 64-3-6(f) (1953); *North Carolina*: N.C. GEN. STAT. § 105-89(c)(5) (1963); *Virginia*: VA. CODE §§ 35.64-1, 35.64-5 (1950).

12. *California*: CAL. REV. & TAX CODE ANN. § 10753.2(e) (West 1956) (2 per cent of market value; home assessed at 85 per cent for first year, depreciated to 15 per cent for eighteenth year); *Nebraska*: NEB. REV. STAT. §§ 60-1601, 77-1240.01 (1966); *Oklahoma*: OKLA. STAT. ANN. tit. 47, § 47-22.5(m)(n)(o)(p), tit. 68-2101 to 68-2109 (Supp. 1971); *Oregon*: ORE. REV. STAT. §§ 481.460, 481.471 (1969) (2 per cent of value or \$10.00, whichever is greater); *Wisconsin*: WIS. STAT. ANN. 66.058(3) (Supp. 1971) (taxed at same rate as other property).

13. *Delaware*: DEL. CODE ANN. tit. 14, § 14-1930 (Supp. 1970); *Maine*: ME. REV. STAT. ANN. tit. 36, § 551-1482.B (Supp. 1970); *Maryland*: MD. ANN. CODE art. 81, § 19(2)(c) (1957) (as long as permanently attached land); *Montana*: MONT. REV. CODES ANN. §§ 84-101 (third), 84-301 (Class four (b)), 84-302 (Supp. 1971); *New York*: N.Y. REAL PROP. TAX § 102(g) (McKinney 1960); *Texas*: TEX. CIVIL STAT. art. 7146 (Vernon Supp. 1971) (provided owner of mobile home also owns the land on which it rests).

14. *Arizona*: ARIZ. REV. STAT. ANN. § 42-641 (Supp. 1969); *Indiana*: IND.

property taxation statutes.<sup>15</sup> Some states provide alternative methods of taxation. Depending on circumstances, the mobile home is subject to: a real or personal property tax in Mississippi,<sup>16</sup> Pennsylvania,<sup>17</sup> and Connecticut;<sup>18</sup> real property taxation or a license fee in Florida<sup>19</sup> and Kansas;<sup>20</sup> or a personal property tax or license fee in Alabama<sup>21</sup> and Missouri.<sup>22</sup> Two states imply some sort of taxation, but give no hint as to the type, by requiring a permit which will be issued only upon proof of payment of all *appropriate* taxes.<sup>23</sup> Finally, an inspection of the statutes of two states reveals no data on the subject of mobile home taxation.<sup>24</sup>

#### THE REAL PROPERTY APPROACH

There are various approaches to the taxation of mobile homes as real property. While an analysis of the statutes of all states<sup>25</sup> which always or sometimes tax mobile homes as real estate is necessary for a total understanding of the real property approach, a discussion of several statutes suffices to raise the important issues involved with such an approach. In Pennsylvania, the mobile home is taxed as real property to the *owner* of the home only when it is *permanently attached* to the land.<sup>26</sup> Texas, on the other hand, taxes the *owner* of the mobile home with a real property tax, regardless of whether the home is attached to the land.<sup>27</sup> Fi-

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ANN. STAT. §§ 64-622(a) to 64-622(i) (Burns 1961); *Nevada*: NEV. REV. STAT. § 361.561 to 361.5644 (1968).

15. *Arkansas*: ARK. STAT. ANN. § 75-133.1 (1947), and § 84-406 (Supp. 1969); *Idaho*: IDAHO CODE §§ 63-1201, 63-1203 (1947); *New Hampshire*: N.H. REV. STAT. ANN. § 72-7-a (Supp. 1971); *Tennessee*: TENN. CODE ANN. § 67-501 (Supp. 1970); *Utah*: UTAH CODE ANN. § 59-1-1 (1953); *Vermont*: VT. STAT. ANN. §§ 32-2802, 32-5079 (Supp. 1971); *West Virginia*: W. VA. CODE ANN. § 11-5-1 (1966).

16. *Mississippi*: MISS. CODE ANN. §§ 10007-71 to 10007-78 (Supp. 1970) (personal property tax if land not owned; taxed as real property if land owned and home permanently attached to land).

17. PA. STAT. ANN. tit. 72, §§ 5020.201, 5453.201, 5453.617(a) (1971).

18. CONN. GEN. STAT. ANN. § 12-63(a) (Supp. 1971).

19. FLA. STAT. ANN. § 320.081 (1968), § 320.0815 (Supp. 1971).

20. KAN. STAT. ANN. §§ 38-143(5), 79-101 (Supp. 1970).

21. ALA. CODE tit. 51, § 704 (1), (2) (Supp. 1969).

22. MO. ANN. STAT. §§ 137.090, 144.550 (Vernon Supp. 1970).

23. *Georgia*: GA. CODE ANN. § 23-2707 (Supp. 1970); *South Carolina*: S.C. CODE §§ 46-100.0 to 46-100.5 (Supp. 1970).

24. Hawaii and Rhode Island.

25. Connecticut, Delaware, Florida, Kansas, Maine, Maryland, Mississippi, Montana, New York, Pennsylvania, Texas.

26. PA. STAT. ANN. tit. 72, §§ 5020.201, 5453.201, 5453.617(a) (1968).

27. TEX. CIVIL STAT. art. 7146 (Vernon Supp. 1971).

nally, New York includes the value of any mobile home, attached or not, in the assessment of the land on which it rests, regardless of who owns the land.<sup>28</sup> Of the three approaches, Pennsylvania's is the most theoretically acceptable. First, it taxes only the owner of the mobile home and thus avoids any due process or equal protection conflicts which arise when someone other than the owner is taxed. Second, Pennsylvania treats only mobile homes permanently attached to the land as real estate.

The definition of real property has always encompassed land and those objects permanently affixed to land. Real property

consists of such things as are permanent, fixed, and immovable, as lands, tenements, and hereditaments of all kinds, which are not annexed to the person, or cannot be moved from the place in which they subsist.<sup>29</sup>

Case law has generally adhered to such a definition, and stressed permanent attachment as an indispensable element of real property.<sup>30</sup> Thus, theoretically, if a mobile home is permanently attached to land, it is real property.

Once it is accepted that a mobile home permanently attached to the land is real property, the question becomes what constitutes permanent attachment. Certainly, a mobile home which has lost its mobile characteristics by its actual physical attachment to a foundation and the removal of its wheels has become so attached. The few courts which have considered the question have agreed unanimously.<sup>31</sup>

In 1939, New York became the first jurisdiction to confront the immovable mobile object.<sup>32</sup> Plaintiff brought a lunch wagon onto some land, removed its wheels, and placed it upon a brick foundation built into the ground. He then connected the wagon with water, gas, and electrical outlets. The local assessor treated the wagon as real property, and sent the plaintiff an appropriate bill.<sup>33</sup> Upon plaintiff's objection, the court held the assessment valid because, "when an improvement such as this is made it (the wagon) is taxable as real property as long as it remains on the land."<sup>34</sup>

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28. N.Y. REAL PROP. TAX § 102(12g) (McKinney 1960).

29. 42 AM. JUR. *Property* § 13 (1942). BLACK'S LAW DICTIONARY 1383 (4th ed. 1951) defines real property as, "Land and generally whatever is erected or growing upon or affixed to land."

30. See, e.g., *Jilek v. C. W. & F. Coal Co.*, 382 Ill. 241, 47 N.E.2d 96 (1943); *Woodworth v. Franklin*, 85 Okla. 27, 204 P. 452 (1922).

31. *People ex rel. Herzog v. Miller*, 170 Misc. 1063, 11 N.Y.S.2d 572 (1939), *aff'd*, 258 App. Div. 724, 15 N.Y.S.2d 141 (1939); *Coyle Assessment*, 17 Pa. D. & C. 2d 149 (1958); *State v. Work*, 75 Wash. 2d 204, 449 P.2d 806 (1969).

32. *People ex rel. Herzog v. Miller*, *supra* note 31.

33. *People ex rel. Herzog v. Miller*, *supra* note 31 at 1064, 11 N.Y.S.2d at 573.

34. *People ex rel. Herzog v. Miller*, *supra* note 31, at 1064, 11 N.Y.S.2d at 573.

The Pennsylvania court considered the issue in 1958.<sup>35</sup> Three mobile homes rested upon plaintiff's land—he owned one himself and his children owned the other two. All the homes were connected to utility outlets and rested upon concrete blocks. The wheels of all three homes had been removed. The land assessment included the value of all three homes, and the plaintiff objected to such assessment.<sup>36</sup> In upholding the assessment, the court found that, based upon all the relevant circumstances, such homes were permanently attached to the land and, thus, were to be treated as real property for tax purposes.<sup>37</sup>

Most recently, in 1969, the Washington Supreme Court had to decide the issue of when a mobile home became permanently attached to the land.<sup>38</sup> Defendant bought a mobile home, removed its axles, wheels, and hitch, placed it upon a permanent concrete block foundation, and attached it to water, electric, and sewerage services. Subsequently he was convicted of violating a zoning statute which prohibited the permanent placing of an immobilized vehicle upon residentially zoned land.<sup>39</sup> Overruling his conviction, the court held that when a mobile home loses its mobile characteristics and thus becomes permanently attached to the land, it becomes real property within the scope of the zoning laws.<sup>40</sup>

Thus, there is little theoretical argument against taxing mobile homes as real property when they are physically and permanently attached to the land. The law, however, recognizes another type of permanent attachment, something akin to constructive attachment. That is, when a person places an object on the land with the *intention* that it become part of the land, that object becomes part of the realty.<sup>41</sup>

Probably the best illustration of constructive attachment lies in the area of fixtures. According to the fixture doctrine, articles become part of the land if such annexation is reasonable after a balancing of three criteria: (1) the degree of physical attachment; (2) the appropriateness of the realty to the article attached; and (3) the intention of the

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35. Coyle Assessment, *supra* note 31.

36. Coyle Assessment, *supra* note 31 at 151.

37. Coyle Assessment, *supra* note 31 at 152.

38. State v. Work, *supra* note 31.

39. State v. Work, *supra* note 31 at 205, 449 P.2d at 806-07.

40. State v. Work, *supra* note 31 at 207, 449 P.2d at 808-09.

41. 42 AM. JUR. Property § 29 (1942). "But ordinarily that which is in its nature otherwise personal, when . . . constructively attached by its use or intended use with the soil, becomes a part of the realty. Among the principal criteria for determining whether property remains personalty or becomes realty are . . . the intention of the parties." See also *Lavenson v. Standard*, 80 Cal. 245, 22 P. 184 (1889) and *Jenkins v. McCurdy*, 48 Wis. 628, 4 N.W. 807 (1890).



parties.<sup>42</sup> However, the modern trend is to focus almost exclusively on the intention of the parties, and to consider the other two criteria mainly as evidence of such intent.<sup>43</sup> Consequently, if a person intends that his structure become permanently attached to the land, it accedes to and becomes part of the realty.

Several cases are illustrative. In *Royal Store Fixture Company v. Patten*,<sup>44</sup> plaintiff sold one Zaroff a frozen custard stand and related equipment under a conditional sales agreement. Zaroff in turn placed the stand upon defendant's land under a lease, and connected it to water and electric lines as well as to a cesspool. Zaroff defaulted in his payments to both plaintiff and defendant. Plaintiff brought an action in replevin against defendant who answered that the stand had acceded to the realty as a matter of law, and that title consequently rested in him.<sup>45</sup> The court held that as long as the stand could be removed without material injury to the land, the *intent* of the parties determined if it acceded to the real estate. After considering all the circumstances, the court ruled that there was no intent to permanently attach and that title therefore belonged to the plaintiff.<sup>46</sup>

A similar case is *Sigrol Realty Corporation v. Valcich*.<sup>47</sup> One Wilmore owned land upon which tenants had placed frame bungalows. These bungalows rested on cinder blocks and were connected to water and electrical outlets. Wilmore sold the land to plaintiff who, upon expiration of the leases, brought an unlawful detainer action against defendant-tenants. When defendants attempted to remove the bungalows, plaintiff instituted an action to declare that title to the bungalows was in him, since they had become permanently attached to, and therefore part of, the land.<sup>48</sup> The court held that the bungalows were realty or personalty depending upon the agreement (intent) of the parties, and that the evidence indicated that the bungalows remained personalty and did not accede to the land.<sup>49</sup>

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42. See generally 22 AM. JUR. *Fixtures* § 3 (1939) and the numerous cases cited therein.

43. See generally 22 AM. JUR. *Fixtures* § 6 (1938). See also *Lesser v. Bridgeport-City Trust Co.*, 124 Conn. 59, 198 A. 252 (1938); *Thomson v. Smith*, 111 Iowa 718, 83 N.W. 789 (1900); *Hanson v. Ryan*, 185 Wis. 566, 201 N.W. 749 (1925).

44. 183 Pa. Super. 249 (1957).

45. *Id.* at 251-52.

46. *Id.* at 254-56.

47. 12 App. Div. 430, 212 N.Y.S.2d 224 (1961) *aff'd mem.*, 11 N.Y.2d 668, 225 N.Y.S.2d 748, 180 N.E.2d 904 (1962).

48. *Id.* at 431, 212 N.Y.S.2d at 225-26.

49. *Id.* at 432, 212 N.Y.S.2d at 227.

The Pennsylvania courts have applied this intent criteria in deciding whether mobile homes not actually physically affixed to the land might nevertheless be permanently attached thereto for real estate tax purposes.<sup>50</sup> In a recent case,<sup>51</sup> a mobile home owner had maintained his home on the same site for over three years, and had connected it to various utility outlets. The court held that these, together with all the other circumstances, indicated that the owner intended to permanently attach his mobile home to the land. Consequently, a real estate tax levied on such owner was valid.<sup>52</sup>

An earlier decision by a higher Pennsylvania court applied the same intent test but arrived at a different conclusion. In *Streyle v. Board of Property Assessment, Appraisal, and Review*,<sup>53</sup> the owner of a mobile home park objected to the land assessment which included the value of various mobile homes resting on the land<sup>54</sup> (this assessment was made prior to the currently effective Pennsylvania law<sup>55</sup> which prohibited such an assessment against anyone not owning the land upon which the home rests). The homes had been located on the land for various lengths of time, and were connected to water and gas lines, but were not actually physically annexed to the land. The court held that, judging from the intentions of the parties involved, the homes were not permanently attached to the land and could not be subjected to real estate taxation.<sup>56</sup>

Thus, in accordance with fixture cases and the general constructive attachment doctrine, a mobile home can be classified theoretically as real property, provided that its owner intends it to be permanently attached to the land. Of course, mobile homes which are actually physically attached to the land are properly designated real property. Moreover, the Pennsylvania statute which provides that a real property tax be levied on all owners of permanently attached mobile homes cannot be attacked successfully by any legal argument. The Pennsylvania statute is both valid and sound.

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50. Lantz Appeal, 199 Pa. Super. 310, 184 A. 2d 127 (1962); *Streyle v. Board of Prop. Assess., App. & Rev.*, 173 Pa. Super. 324, 98 A.2d 410 (1953); *Harman v. Fulton County*, 24 Pa. D. & C.2d 611 (1960); *Fryer Appeal*, 81 Pa. D. & C. 139 (1951); *Mason Appeal*, 75 Pa. D. & C. 1 (1950).

51. *Loash v. Berks County Assessment Bd.*, 55 Berks 104 (1963).

52. *Id.* at 105.

53. 173 Pa. Super. 324, 98 A.2d 410 (1953).

54. *Id.* at 324-25, 98 A. 2d at 411.

55. PA. STAT. ANN. tit. 72, § 5453.617a (1968).

56. *Supra* note 53, at 326-27, 98 A.2d at 412. *Accord*, *Kinkella v. Board of Prop. Assess., App. & Rev.*, 173 Pa. Super. 329, 98 A.2d 413 (1953).

The Texas approach is similar to the Pennsylvania approach in that it taxes only owners of mobile homes. However, the Texas statute makes no distinction between permanently attached and non-attached mobile homes—all are treated as real property for tax purposes.<sup>57</sup> This is objectionable because mobile homes do not fit the traditional definition of real property.

The courts, in the absence of a statute which defines mobile homes as real property, have agreed that a mobile home is not real property. For example, in *Fryer Appeal*,<sup>58</sup> the value of various mobile homes in a trailer park was included in the assessment of the land for real property tax purposes. The owner of the park objected to such assessment, asserting that the homes were personalty and not realty.<sup>59</sup> The court agreed and voided the assessment saying, "[i]t is not necessarily the extent to which such personal property is attached to the real estate but the intention of the parties to make it part of the real estate that controls."<sup>60</sup> Thus, a mobile home is inherently personalty and not real property. Unless it is somehow permanently attached to the land—either actually or constructively, *i.e.*, with the owner's intent—it is illogical to treat the mobile home as real property.<sup>61</sup>

The California Court of Appeals has ruled in accordance with Pennsylvania.<sup>62</sup> In one instance plaintiff bought some land from defendant, who was living in a mobile home located on such land. Although connected to utilities, the home was on its wheels and easily transportable. When defendant removed the home, plaintiff sued in breach of contract, claiming that such trailer had been annexed to the realty and was therefore included in the sale.<sup>63</sup> The court held that the home was not real property because of its inherent nature as personalty and its lack of permanent attachment to the land.<sup>64</sup>

New York has also considered the problem<sup>65</sup> and ruled that despite

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57. TEX. CIVIL STAT. art. 7146 (Vernon Supp. 1971).

58. *Fryer Appeal*, 81 Pa. D. & C. 139 (1951).

59. *Id.* at 139-40.

60. *Id.* at 141.

61. See *Stewart v. Carrington*, 203 Misc. 543, 119 N.Y.S. 2d 778, (S. Ct. 1953); *Streyle v. Bd. of Assess., App. and Rev.*, *supra* note 53; *Kinkella v. Board of Prop. Assess., App. & Rev.*, *supra* note 56; *Hartman v. Fulton County*, 24 Pa. D. & C.2d 611 (1961); *Mason Appeal*, 75 Pa. D. & C. 1 (1950).

62. *Clifford v. Epsten*, 106 Cal. App. 2d 221, 234 P.2d 687 (1951).

63. *Id.* at 222-23, 234 P.2d at 687-88.

64. *Id.* at 225, 234 P.2d at 690.

65. *Panarello v. Board of Assessors*, 64 Misc.2d 967, 316 N.Y.S.2d 403 (S. Ct. 1970).

the statute that classifies mobile homes as real estate for tax purposes,<sup>66</sup> under certain circumstances trailers remain personalty. Plaintiff had modular homes on his land for display and sale purposes only. The homes were unoccupied, unconnected to utilities, and not affixed to foundations. Nevertheless, the value of such homes was included in the tax assessment of the land.<sup>67</sup> The court ruled the assessment invalid on the ground that unoccupied and unattached mobile units were not real estate.<sup>68</sup>

By treating the mobile home as real property, even when it is not permanently attached to the land, Texas and other states<sup>69</sup> are creating a legal fiction. While fictions are plentiful in our law, they are generally considered a necessary evil rather than a desirable commodity. The American legal system has adopted the fiction that legislatures may tax personalty as real estate provided there is some rational basis for so doing.<sup>70</sup> In fact, this proposition is so well entrenched<sup>71</sup> that it is difficult to attack. This adoption, however, does not make the fiction any more acceptable to the legal theorist. The fictional law is always inferior to the pure law, provided, of course, that the desired end is achieved by either. The desired end of a fictional law which levies a real property tax on mobile homes is the raising of revenue. This end can be accomplished by other means—such as by the imposition of a privilege tax—which would leave our law undiluted. Therefore, one must conclude that the Texas approach is inferior despite its validity.

The New York approach goes one step further.<sup>72</sup> New York not only treats all mobile homes as real property for tax purposes, it also levies such tax on the owner of the land upon which the homes rest, even though he is usually someone other than the mobile home owner. Thus,

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66. N.Y. REAL PROP. TAX § 102(g) (McKinney 1960).

67. *Supra* note 65, at 968, 316 N.Y.S.2d at 403-04.

68. *Supra* note 65, at 968, 316 N.Y.S.2d at 405.

69. *E.g.*, DEL. CODE ANN. tit. 14, § 14-1930 (Supp. 1970).

70. *See e.g.*, U.S. v. Town of Marlborough, 305 F. Supp. 718 (D.C. N.Hamp. 1969); Johnson v. Roberts, 102 Ill. 655 (1882); Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A.2d 5 (1944); Application of New York Telephone Co., 257 App. Div. 415, 13 N.Y.S. 2d 359, *appeal granted* 257 App. Div. 1099, 14 N.Y.S.2d 1005, *aff'd* New York Telephone Co. v. Ferris, 282 N.Y. 667, 26 N.E.2d 805 (1940).

71. 84 C.J.S. *Taxation* § 67 (1954). "It is entirely competent for the legislature, for the purpose of taxation, to make realty that which would be personal property at common law, and vice versa, and, as defined for purposes of taxation, the term 'real property' may include things which should generally be regarded as personal property."

72. N.Y. REAL PROP. TAX § 102(g) (McKinney 1960).

in New York, a person is taxed for property he does not own. This is so repugnant to our general conception of due process and equal protection of the laws that even the New York courts had difficulty accepting the statute.

*Beagell v. Douglas*<sup>73</sup> was the first case which confronted the application of this statute. In *Beagell*, plaintiff was the owner of a mobile home park whose land assessment included the value of mobile homes owned by his tenants. He challenged the constitutionality of the then recently passed statute which provided for such an assessment.<sup>74</sup> The court hastily dismissed plaintiff's argument and held that since, "[t]he legislature has the power to classify and define what property is taxable as real property,"<sup>75</sup> the statute is valid.<sup>76</sup>

During the same year *Beagell* was decided, another New York court considered the statute in *Erwin v. Farrington*.<sup>77</sup> In this case, the park owner, who had been assessed for the value of the trailers belonging to his tenants, passed the tax onto his tenants. The tenants refused to pay and the landlord sued for breach of a covenant in the lease which provided that the tenant pay all taxes assessed on all constructed objects on the premises.<sup>78</sup> While not specifically declaring the statute unconstitutional, the court held for defendant-tenants and stated, "a tenant by assuming in a lease the payment of taxes which shall be subsequently levied upon the demised premises does not thereby obligate himself to pay any taxes which may be illegal and void."<sup>79</sup> This language is somewhat vague; at the very least, however, the court indicated its suspicion of the statute.<sup>80</sup>

The highest New York court settled the controversy six years later. *New York Mobile Home Association v. Steckel*<sup>81</sup> had the same facts as *Beagell*. The court responded to plaintiff's allegation that he was being taxed for property belonging to another and therefore was being deprived of due process by drawing an analogy to the taxation imposed upon a landlord whose tenant constructs a building on the leased premises.

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73. *Beagell v. Douglas*, 2 Misc.2d 361, 157 N.Y.S.2d 461 (S.Ct. 1955).

74. *Id.* at 362, 157 N.Y.S.2d at 462.

75. *Id.* at 363, 157 N.Y.S.2d at 463.

76. *Accord*, *Feld v. Hanna*, 4 Misc. 2d 3, 158 N.Y.S.2d 94 (S. Ct. 1956).

77. 285 App. Div. 1212, 140 N.Y.S.2d 379 (S. Ct. 1955).

78. *Id.* at 1212, 140 N.Y.S.2d at 380.

79. *Id.* at 1212, 140 N.Y.S.2d at 380.

80. *See also Barnes v. Gorham*, 12 Misc.2d 285, 293-95, 175 N.Y.S.2d 376, 385-86 (S.Ct. 1957) where the court expressed similar suspicion but specifically ruled the statute invalid because of potential hardship.

81. 9 N.Y.2d 533, 215 N.Y.S.2d 487, 175 N.E.2d 151 (1961).

es. When a lessor rents land to a lessee who puts a building upon such land, the court reasoned, the value of such building is included in the assessment of the land. The landlord, in turn, can pass the tax onto the lessee, the one who should rightfully pay the tax, by a rent increase or an amendment to the lease. Thus the landlord is not deprived of any property.<sup>82</sup> "So too in the instant situation, the trailer park owner has the means at his disposal, by way of rent, to allocate the increased tax upon the owner of the trailer—the individual who rightfully should pay for it."<sup>83</sup>

With this decision New York became the first and leading state to tax the mobile home park owner for property he did not own. So contrary is this conception to the gist of due process that few cases lend themselves to discussion. The *Steckel* court itself found only one analogous precedent, that of the landlord whose tenant constructs an improvement upon the land.<sup>84</sup>

The improvement analogy is a dangerous one. An owner of a mobile home park runs a much higher risk of being unjustly saddled with the real estate tax than does the landlord (for convenience sake hereinafter referred to as the conventional landlord) whose tenant builds a truly permanent improvement upon the land. First of all, assessment difficulties arise. The conventional landlord can easily determine what portion of his tax is attributable to the tenant's building. All he need do is subtract the unimproved tax bill from the current bill which includes the value of the improvement; the difference is the portion assessed to the improvement. More importantly, the entire amount due to the increased assessment can be passed on to a single tenant. The mobile home park owner can likewise easily compute the portion of the tax levied on the various mobile homes. It will be practically impossible for him, however, to justly apportion the total increase among his tenants. Any mobile home park contains homes of widely divergent values. The owner of the \$12,000 mobile home should pay twice the tax as the owner of the \$6,000 home, and one and a quarter times the tax of the owner of the \$9,000 home. If the park owner is to pass on the tax fairly, he must determine the value of all the homes and tax each in proportion thereto.<sup>85</sup>

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82. *Id.* at 539, 215 N.Y.S.2d at 491, 175 N.E.2d at 154.

83. *Id.* at 539, 215 N.Y.S.2d at 491, 175 N.E.2d at 154.

84. This is generally the law. See e.g., *People ex rel. Van Nest v. Commissioners of Taxes and Assessments*, 80 N.Y. 573, 577 (1880); *Fort Hamilton Manor, Inc. v. Boyland*, 4 N.Y. 2d 192, 198, 173 N.Y.S.2d 560, 564, 149 N.E.2d 856, 858-59 (1958).

85. See Carter, *Problems In The Regulation and Taxation of Mobile Homes*, 48 IOWA L. REV. 16, 54 (1962).

In addition, the conventional landlord runs no risk of being left without recourse if the tenant fails to pay the tax—provided of course that agreement for such payment has been reached. The tenant's building is attached permanently to the land and, in case of default, the landlord has a lien on such building. The mobile home park owner has no such security. While a similar lien may attach to the mobile home, it is still mobile and may be quickly transported. A park owner who is not ever-alert might find his security has left the state. The conventional tenant may expatriate to Argentina, but his building remains in New York; the expatriate mobile home tenant takes the landlord's security with him.

Plaintiff in *Steckel* attempted to convince the court of the unconstitutionality of the New York statute with reference to another analogy, that of a person being taxed for the income of another. The case of *Hoeper v. Tax Commissioner*<sup>86</sup> is the leading case on point. Wisconsin passed a statute which declared that a husband and wife must file an income tax return whereby the total tax due would be that computed on their combined average taxable income. Plaintiff husband and his wife each had substantial incomes. Due to the graduated nature of the tax, *i.e.*, the higher the income the higher the tax rate, the plaintiff would pay a substantially lower tax if he and his wife filed separate returns. Plaintiff paid the higher tax in accordance with the statute and sued for a refund, asserting that the statute was unconstitutional because it violated the due process clause of the fourteenth amendment.<sup>87</sup> The court accepted plaintiff's argument and struck down the statute. Ruling that it was a violation of due process to tax one person with reference to the property of another, the court stated:

[W]e have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's *property* or income by reference to the *property* or income of another is contrary to due process of law as guaranteed by the the Fourteenth Amendment.<sup>88</sup>

Although the *Steckel* court summarily rejected plaintiff's analysis<sup>89</sup> as misplaced, it is as logical and valid as the land improvement analogy which it used as the rationale for its decision. The Supreme Court and common experience dictate that it is a violation of due process of law to tax one man for the property of another, but the *Steckel* decision allowed expediency to dictate the upholding of a statute which accomplishes just that.

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86. *Hoeper v. Tax Commissioner*, 284 U.S. 206 (1931).

87. *Id.* at 213.

88. *Id.* at 215 (emphasis added).

89. *Supra* note 81, at 540, 215 N.Y.S.2d at 492, 175 N.E.2d at 155.

Thus, the New York approach is objectionable in several respects. First, it classifies all mobile homes as real property for tax purposes. This is at best an unnecessary and therefore undesirable fiction which dilutes our law. Second, it taxes one for the property of another which is at best illogical and, quite possibly, a violation of the due process clause of the Constitution. One might be willing to accept New York's approach if no other means were available to insure that mobile home owners pay their fair share of taxes. Unfortunately, New York is unable to make such a claim. Simple expediency is the real basis for its statute.

Despite legal objections to taxing mobile homes as real property, several knowledgeable authors advocate the real property taxation approach.<sup>90</sup> Generally, the rationale underlying such an approach is that, "[p]roperty taxes should affect equally all those who own similar kinds of property."<sup>91</sup> This rationale is often termed the horizontal equity doctrine, and is quite attractive as a general principle of law. Many inequities arise, however, when the doctrine is applied to mobile homes. An examination of the horizontal equity approach as expounded by two of its chief proponents is illustrative.

Berney and Larson define horizontal equity to mean that, "people in like circumstances should be taxed in a similar manner."<sup>92</sup> Since mobile home owners and conventional home dwellers are in "like circumstances," they assert, both should be taxed in a similar manner—a real property tax should be levied on their homes. Both classes are in "like circumstances" because of the similarity in (1) income, and (2) the type of shelter in which they live. The authors determine that mobile home owners have incomes and shelters similar to their conventionally housed counterparts based on this analysis.

The mobile home owners of Arizona are classified into occupational categories; the heads of all households are appropriately placed within the same categories. It is *assumed* that the median income level for any occupational category is appropriate for Arizona's mobile home families. Therefore, the median income for each occupational category is multiplied by the number of mobile home household heads who fit within each

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90. Bartke & Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491 (1970); Berney & Larson, *Micro-Analysis of Mobile Home Characteristics With Implications for Tax Policy*, 42 LAND ECON. 453 (1966); Comment, *Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 YALE L. J. 702 (1962).

91. Bartke & Gage, *supra* note 90, at 520.

92. Berney & Larson, *supra* note 90, at 458.



category. The totals for each category are added and the sum is divided by the total number of mobile home families. The resulting quotient is the average income for a mobile home household. A similar computation is performed to determine the average income for all Arizona families within the labor force. A comparison of the two figures reveals marked similarity of average incomes. The average income of a mobile home family is only \$29 less than the average income of all households. Thus, "similarity" of income is proved.<sup>93</sup>

As for similarity of shelter, the authors cursorily conclude that mobile homes, despite their dual nature, are dwelling units which provide "shelter." With little explanation, it is asserted from this that mobile homes should be taxed as all other types of shelter; a real property tax should be levied upon them.<sup>94</sup>

Robert Rooney uses a supply and demand argument to refute Berney and Larson.<sup>95</sup> Since the cost of a mobile home is relatively low, a small tax increase will have a great effect on the total ownership cost of such a home.<sup>96</sup> With the higher cost of mobile home living, many people who might usually purchase mobile homes will instead buy conventional houses. This increased number of purchasers in the market will drive the already high cost of conventional housing even higher. Correspondingly, the housing shortage will become more critical than it is already. Finally, the increased cost of a home will be reflected in its higher assessment figure for tax purposes, and consequently a higher tax will be imposed on the home. Thus, the end result of imposing real property taxation upon mobile homes will be: a more acute housing shortage, a higher initial cost of a conventional home and a higher real property tax for all home owners.<sup>97</sup>

Other attacks can be made on the real property taxation approach to mobile homes. First of all, while it is true that the concept of horizontal equity underlies much of our tax policy, it is not the only concept considered in determining that policy. The benefits-received theory is also somewhat influential. According to this theory, persons are taxed commensurate with the benefits they receive from the taxing body. Mobile home dwellers receive considerably fewer benefits from local government

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93. Berney & Larson, *supra* note 90, at 456.

94. Berney & Larson, *supra* note 90, at 459.

95. Rooney, *Micro Analysis of Mobile Home Characteristics with Implications for Tax Policy: A Reply*, 44 LAND ECON. 414 (1968).

96. The author computes the interest to be as high as 11 percent. *Id.* at 415.

97. Berney & Larson, *Micro Analysis of Mobile Home Characteristics with Implications for Tax Policy: Rejoinder*, 44 LAND ECON. 417 (1968).

agencies than do other home owners. Because of the fewer number of children per home, especially children of school age,<sup>98</sup> mobile home owners may already be contributing more per household to public schools than their conventionally housed counterparts.<sup>99</sup> In addition, the paving and upkeep of all streets within the mobile home park are paid for by the park owner.<sup>100</sup> Besides garbage pickup (which sometimes is paid for by the owner) the only immediately noticeable benefits the mobile home owner receives are police and fire protection. In any medium to large sized urban area, the added expense of providing such protection to mobile home residents must be minimal. It is recognized that the benefits-received approach should not be the basic concept underlying our tax policy—such an occurrence would place a most undesirable and impractical tax burden upon the poor—nevertheless, it should be considered before deciding the *proper* approach to mobile home taxation.

Even if the horizontal equity concept is summarily accepted, the proposition that mobile home owners and conventional home owners are in "similar circumstances" is heartily disputed. Berney and Larson assert that mobile homes are similar to other houses because their primary function is to provide shelter; this is undeniable. However, to conclude therefrom that mobile home dwellers must pay a real estate tax because those who live in "all other types of shelter" pay such a tax is subject to debate. All persons who live in sheltered areas do not pay real property taxes. People who live in apartments do not pay real estate taxes; neither do those who live in hotels or boarding houses. Why is a mobile home owner the only sheltered entity who should be considered "in like circumstances" with a home dweller? Moreover, the mobile home owner is more "similar" to an apartment dweller than he is to a conventional home owner. The home owner has a fee simple title to a plot of ground which affords him security for money lending ventures. The mobile home owner has no such title and no such security. While the land owner may not be thrown off his land, the mobile home owner, like the apartment dweller, rents space. At the landlord's or park owner's whim, such space may not be available upon the expiration of the lease.<sup>101</sup>

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98. See previous textual material accompanying *supra* notes 8 and 9.

99. "[B]ecause of the type of people this mode of living attracts, mobile home dwellers may require fewer services than the population at large. . . . This seems particularly true of schools, which are heavily supported by local property taxation." Bartke & Gage, *supra* note 90, at 521.

100. Interview with Mr. and Mrs. A. Bleau, owners of various mobile home parks in Indiana and Illinois, in Oak Lawn, Illinois, Nov. 17, 1971.

101. Most mobile home owners rent space on a month-to-month tenancy agreement.

Correspondingly, rent increases may be frequently imposed upon mobile home and apartment devotees, but the conventional home owner never suffers increased mortgage payments. Generally, there seems to be little basis from which to conclude that mobile home residents are any more like conventional home owners than are apartment dwellers. If horizontal equity demands that all those living under shelter pay a real property tax, then those who live in apartments, hotels, and boarding houses should pay the same tax.

The Berney and Larson conclusion that mobile and conventional households have similar incomes is likewise debatable. The income similarity which they compute is based upon the assumption that a mobile home resident with a particular occupation makes the same median income as all others with that occupation. This assumption is false because of two facts: (1) Within every occupation there exists a wide range of income levels which are usually parallel with the ages of the persons within the occupation—the older the worker, the higher his earnings; (2) the average mobile home owner within the labor force is considerably younger than his conventionally housed neighbor. The Bureau of Census figures previously cited indicate that 43.4 per cent of the heads of all mobile home households are less than 35 years old; only 23.6 per cent of all home owners lie within this age range. It is fundamental that the prime earning years for an American are those between his 36th and 54th birthday. With few exceptions, the 30 year old salesman, lawyer, or truck driver makes considerably less than his 46 year old colleague.<sup>102</sup> Thus, it is inaccurate to apply the median income levels of any occupation to mobile home owners who fall disproportionately within the lower strata of the income ranges of nearly every occupation.

Nationwide studies prove the fallacy of the Berney and Larson conclusion. The latest available Census Bureau statistics show that the median family income level for mobile home dwellers is only \$6,620, while the all family median is \$7,440.<sup>103</sup> This is a difference of roughly \$800 or 13 per cent per family—quite a substantial difference. Thus, mobile home and conventional home owners are not similar with respect to income. Since mobile home and conventionally housed residents are not in “similar circumstances” (concerning either type of shelter or income), horizontal equity does not demand that they be taxed the same way.

One further reason makes the real property taxation approach undesirable. Mobile homes currently provide safe and decent housing for

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102. Heroux, *Results and Analysis of the 1971 Illinois Bar Economics Survey*, 1971 ILLINOIS BAR J. 182 (Nov. 1971).

103. *Supra* note 7.

many persons who have no reasonable alternative.<sup>104</sup> Almost 60 per cent of the mobile home households heads in America either are under 35 or retired.<sup>105</sup> The median income of these young people and retirees is probably less than the \$6,640 median of all mobile home families. Even accepting that figure as representative, however, certain calculations are striking.

The United States Government bases its housing policies upon the proposition that no more than one-quarter of a person's income should be spent on decent housing.<sup>106</sup> Such a figure, while probably slightly lower than the average's actual housing expense, represents a reasonable goal for all families. According to a recent study conducted throughout New England,<sup>107</sup> the average mobile home owner allocates \$159.15 per month for housing expense while the owner of a conventionally mortgaged \$24,000 home expends \$221.35 per month. Based on such statistics, which should be fairly representative of national levels since they encompass large expensive urban areas such as in Boston, as well as depressed rural areas such as in Maine, the mobile home owner with an income of \$6,640 (the median level) spends 29 per cent of that income on decent housing. If he bought the corresponding conventional home, his housing expense would be 40 per cent—an unreasonable if not prohibitory figure. Moreover, it is the tax difference which produces most of the disparity in the monthly expense figures. The survey indicates that \$46 per month of the difference is due to the tax variations. If the tax is substantially increased, the mobile home resident will be forced to find alternate forms of housing, in all likelihood, an apartment. With apart-

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104. "Since conventional builders are virtually unable to build single-family houses priced at less than \$15,000—and there aren't many less than \$20,000 either—the mobile home is just about the only option available to families with less than incomes of \$8,000 or so who want to own their own homes." Mayer, *supra* note 5, at 126. In a similar vein, Presidential Advisor Pierre Rinfret states: "We are developing a new industry that the stock market has just discovered. I discovered it three years ago. I said then that here is an answer to housing in the United States. It's called mobile homes. For six thousand dollars I can produce an eighteen-by-sixty foot home, put it on six concrete blocks and on the land, and it will cost the buyer twenty-five dollars a month [rent]. And that is better housing than I can get from trade union construction for twenty thousand dollars." *Pros and Cons of Inflation*, THE CENTER MAGAZINE, at 65-66 (May, 1969).

105. *Supra* note 7.

106. The National Housing Act § 13, 12 U.S.C. § 1701(s)(d) (Supp. 1970), which provides for rent supplements for lower income families, states: "The amount of the annual payment with respect to any dwelling shall not exceed the amount by which the fair market rental for such unit exceeds one-fourth of the tenant's income." See also Low Rent Housing § 8, 42 U.S.C. § 1402 (Supp. 1970).

107. Greenwald, *supra* note 9, at 4.

ment rents as exorbitant as they are in most urban areas, such a person will be unlikely to find comparable housing for \$159.15 per month. Consequently, his only alternatives are: (1) Rent a safe, decent, but extremely tiny apartment; or (2) rent a larger but unsafe apartment in a depressed area. Either alternative is inferior to his more spacious and tenable mobile home.

Thus, even if one is convinced that mobile homes are similar to conventional homes, he might conclude that social necessity demands a different tax approach to mobile homes. The mobile home provides the only alternative for decent housing for an increasing number of young married or older, retired couples. It may not be able to continue to provide such an alternative if it is taxed like something it is not—real property.<sup>108</sup>

#### THE PERSONAL PROPERTY APPROACH

While personal property may be defined in many ways, mobility is one characteristic encompassed by nearly every definition. *Black's Law Dictionary*, for instance, defines personalty as "movable property."<sup>109</sup> According to the legal encyclopedia, *Corpus Juris Secundum*,

They (pieces of personal property) have been defined as goods, money, and all other movables which may attend the person of the owner wherever he may think proper to go, which is the definition given by Blackstone of 'things personal,' or as goods and chattels. They have been defined as property of a personal or movable nature as opposed to property of a local or immovable character.<sup>110</sup>

The mobile home, because it is a movable chattel, fits within the general definition of personal property. An early commentator on mobile home taxation, James H. Carter, along with numerous others,<sup>111</sup> designates it as such: "Unless it is permanently affixed to the ground in such a manner that it must be considered part of the realty under local property law, the mobile home obviously constitutes personal property."<sup>112</sup> The courts have agreed.<sup>113</sup>

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108. At least one study shows that owner-occupied homes pay a much smaller share of local taxes than is commonly thought: "Putting these various figures together, one arrives at the rather surprising conclusion that only about an eighth of the urban government bill is currently collected in the form of local property taxes on owner-occupied homes." Marvel, *Paying the Urban Bill*, 54 NAT. CIV. REV. 16, 18-19 (1965).

109. BLACK'S LAW DICTIONARY 1301 (4th ed. 1951).

110. 73 C.J.S. *Property* § 8 (1951).

111. See e.g., B. HODES & G. ROBERSON, *THE LAW OF MOBILE HOMES* 110 (2d ed. 1964); Note, *Regulation of Mobile Homes*, 13 SYRACUSE L. REV. 125, 134 (1961).

112. Carter, *supra* note 85, at 50.

113. *Stewart v. Carrington*, *supra* note 61 (1953); *Streyle v. Bd. of Prop. Assess.*,

In one example, prior to the passage of the current New York mobile home taxation statute, plaintiff-park owner's land was assessed for real property taxation purposes to include the value of various tenants' mobile homes. He objected, claiming that the homes were personalty and that taxing them as real property was unconstitutional.<sup>114</sup> The court agreed with plaintiff and held that since mobile homes are personal property, the attempted levy of a real property tax upon them was unconstitutional.<sup>115</sup>

In *Hortman v. Fulton County*,<sup>116</sup> plaintiff owned a mobile home which rested on his land. The home was connected to utilities, and its wheels were removed. It was not, however, attached to any foundation. Plaintiff objected to having a real property tax levied on the mobile home. The court stated that the unit was movable and therefore personal property and, correspondingly, that the real property tax levied upon it was invalid. Applying the "movable chattels are personal property" concept, the court held that "[h]ouse trailers are initially personal property, and they do not become real estate simply because people reside in them."<sup>117</sup>

Thus, it must be conceded that legally mobile homes are classified properly as personalty. Correspondingly, the statutes which impose a personal property tax upon the owner of a mobile home are quite valid and constitutional. Certain practical difficulties, however, make the personal property tax approach less than ideal. In some states these difficulties are acute, while in others they are negligible.

First of all, many states, such as New York, simply do not tax personal property. Others, such as Tennessee,<sup>118</sup> seemingly in an effort to have corporations and not individuals bear the burden of the personal property tax, allows exemptions of as much as several thousand dollars to the owner of personal property. If an individual owns a \$6,000 mobile unit, a \$2,000 exemption will lessen his tax substantially. Still other states, or rather counties within certain states, neglect to enforce their personal property taxation statutes. In all these situations, the mobile home owner may not be paying his fair share of municipal costs.<sup>119</sup>

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App. & Rev., *supra* note 53; *Kinkella v. Bd. of Prop. Assess.*, App. & Rev., *supra* note 56; *Hartman v. Fulton County*, *supra* note 50; *Fryer Appeal*, *supra* note 58; *Mason Appeal*, 75 Pa. D. & C. 1 (1950); *Loash v. Berks County Assessment Bd.*, *supra* note 51.

114. *Stewart v. Carrington*, *supra* note 61 at 544, 119 N.Y.S.2d at 779.

115. *Stewart v. Carrington*, *supra* note 61 at 546, 119 N.Y.S.2d at 781.

116. *Hartman v. Fulton County*, *supra* note 50.

117. *Hartman v. Fulton County*, *supra* note 50 at 614.

118. TENN. CODE ANN. § 67-502 (Supp. 1970).

119. Despite the suspicion, at least one author claims that, even under present

In addition, the personal property tax machinery is often ill-adapted to the problem of equitably assessing a mobile home. Personal property taxation statutes typically empower the assessors initially to assess a piece of property commensurate with its manufacturer's suggested retail price. Such an assessment is just only when all or most purchasers of the property have paid that price. Such a procedure is practical only when the assessor can easily discover the price.

Machinery, which assesses by the manufacturer's suggested retail price procedure, functions best when assessing property which is produced in large volumes, preferably in standard models, by a few large manufacturers. In such situations, the prices are easily acquired by the assessor—each manufacturer submits one suggested price for each of the several standard models produced. Moreover, because he is buying one of a large quantity of models sold from a large manufacturer, the purchaser will have little bargaining power. Consequently, he will most likely pay a price fairly equal to the suggested retail price. For example, the personal property taxation machinery works ideally when taxing American automobiles. The assessor can easily compile the suggested retail prices—each of the several large automotive corporations submits the suggested price for each of its models. In addition, the assessor can be relatively certain that the purchaser pays a price similar to that recommended by the manufacturer—most “Pinto” buyers pay the nationally advertised manufacturer's suggested retail price.

The machinery does not function so smoothly when assessing the mobile home. First, mobile homes are currently being produced by approximately 245 different manufacturers.<sup>120</sup> Each manufacturer, besides producing several standard models, also constructs an increasing number of homes built to the order of the purchaser. Thus, compiling the manufacturer's retail price for the various mobile homes within a taxing district requires a considerable amount of time and effort, neither of which may be available to the personal property assessor. Moreover, the suggested retail price often fails to reflect the actual price which a mobile home purchaser pays. Consequently, an assessment based on the suggested price is unjust. The disparity between suggested and actual prices

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tax laws, mobile homes do pay their fair share: “Balancing local expenditures against revenues per dwelling unit, single family detached housing is generally found to require greatest subsidy, garden apartments and mobile home parks come closer to paying their own way, and high density (and particularly high-rise) apartments turn in a substantial surplus.” Bair, *Mobile Homes—A New Challenge*, 32 LAW & CONTEMP. PROB. 286, 301 (1967).

120. Mayer, *Mobile Homes Move Into the Breach*, FORTUNE, March, 1970, at 126.

is due primarily to the fact that most mobile home park owners are also dealers who rent space only to those who purchase mobile homes from them. The park owner is selling a location, a place to live, as well as a mobile home. Consequently, the value of a desirable location is often included in the price of a mobile home. An owner of a park located in a desirable area—desirability being measured by tangibles such as proximity to transportation, employment opportunities, and shopping and recreational facilities, as well as intangibles such as the social or moral profiles of other tenants within the park—will charge a substantially higher price for the same model than will the owner whose park is located in a depressed area. Thus, if the assessment is to be just, the suggested retail price must be adjusted so that it accurately reflects the true value of the home. The traditional personal property tax statute does not provide the persons or funds necessary of such an adjustment.

Other assessment difficulties may present themselves after the initial assessment. Depreciation tables based on the age of the property, for example, may be extremely accurate when applied to chattels built in accordance with the philosophy of planned obsolescence. The mobile home, however, is neither designed nor built with an eye toward obsolescence. Consequently, the table which depreciates property on a yearly basis may prove quite inaccurate, and the subsequent assessment based on such a table will be unjust.

Thus, practical difficulties often accompany the personal property approach for the taxation of mobile homes. Therefore, in spite of the fact that mobile homes are inherently personalty, to tax them as personal property is not the most desirable taxation approach.

#### THE LICENSE FEE APPROACH

Eighteen states provide that a license fee must or may be imposed upon mobile homes within the state boundaries.<sup>121</sup> Under its police power, a state, in order to provide for the general welfare of its citizens, may regulate anything that might affect their welfare. The power to regulate includes the power to levy license fees upon the regulated entity or activity. Such a license fee is valid as long as it bears a reasonable relationship to the cost of regulation. It is presumed that the license fee does bear a reasonable relationship to the cost of regulating the licensed entity or activity. However, if it is proved that the license fee levied bears no such relationship, the fee is an unauthorized revenue measure and therefore invalid.<sup>122</sup>

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121. See *supra* notes 11, 12, 19, 20, 21, & 22.

122. See *Village of Roxanna v. Castanzo*, 41 Ill. 2d 423, 243 N.E.2d 242



License fee statutes and ordinances passed in reliance upon such statutes have been challenged by various licensees, including mobile home and mobile home park owners. Most of the statutes withstand the reasonable relationship test and are upheld as valid. The following fees imposed upon park owners have been so upheld: a \$500 annual fee;<sup>123</sup> an annual fee of \$15 per mobile home within the park;<sup>124</sup> an annual fee of \$200 plus one dollar per trailer within the park;<sup>125</sup> a levy of \$6 per trailer per month;<sup>126</sup> an annual fee of \$5 per mobile unit;<sup>127</sup> an annual fee of \$500 levied on the first 50 spaces within the park plus \$5 for each space thereafter;<sup>128</sup> an annual fee of \$200 plus \$2 per home within the park;<sup>129</sup> a fee of \$100 per year plus \$1 per week for each occupied home within the park;<sup>130</sup> an annual fee of \$110 per mobil unit within the park;<sup>131</sup> and a levy of \$200 per year.<sup>132</sup> License fees of \$5 per year<sup>133</sup> and \$10 per month<sup>134</sup> levied directly upon the mobile home owner have likewise been upheld.

Certain statutes and/or ordinances, however, have been held invalid because they procured revenue in excess of regulatory costs and thus constituted unauthorized revenue measures. A lead case decided by the Virginia Supreme Court is *County Board of Supervisors v. American*

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(1969); *Panhandle Eastern Pipe Line Co. v. Fadely*, 183 Kan. 803, 332 P.2d 568 (1958); *Merrelli v. City of St. Clair Shores*, 355 Mich. 575, 96 N.W.2d 144 (1959); *City of Richmond Heights v. Lo Conti*, 19 Ohio App. 2d 100, 250 N.E.2d 84 (1969); *Mastrangelo v. Buckley*, 433 Pa. 352, 250 A.2d 447 (1969); *Hoefling v. City of San Antonio*, 85 Tex. 228, 20 S.W. 85 (1892); *City of Charlottesville v. Marks Shows*, 179 Va. 321, 329, 18 S.E.2d 890, 895 (1942). See also 53 CJS *Licenses* § 19a (1948).

123. *City of Chicago v. Schall*, 2 Ill.2d 90, 116 N.E.2d 872 (1954).

124. *Michaels v. Township Committee of Pemberton Tp.*, 3 N.J. Super. 523, 67 A.2d 324 (1949).

125. *Edwards v. Mayor & Council of Borough of Moonachie*, 3 N.J. 17, 68 A.2d 744 (1949).

126. *Konya v. Readington*, 54 N.J. Super. 363, 148 A.2d 868 (1959).

127. *White v. City of Richmond*, 293 Ky. 477, 169 S.W.2d 315 (1943).

128. *Monmouth Jn. Mobile Home Pk. v. South Brunswick Tp.*, 107 N.J. Super. 18, 256 A.2d 721 (1969).

129. *Bellington v. Township of East Windsor*, 17 N.J. 558, 112 A.2d 268 (1955).

130. *Karen v. Town of East Haddam*, 146 Conn. 720, 155 A.2d 921 (1959).

131. *Chandler Services, Inc. v. Florida City*, 202 S. 2d 11 (Fla. 1967).

132. *Nelson Cooney & Son, Inc. v. South Harrison Tp.*, 57 N.J. 384, 273 A.2d 33 (1971).

133. *People v. Stewart*, 204 Misc. 490, 122 N.Y.S.2d 843 (1953).

134. *Barnes v. City of West Allis*, 275 Wis. 31, 81 N.W. 2d 75 (1957).

*Trailer Co.*<sup>135</sup> A Virginia statute authorized counties to regulate mobile home parks and provided that such counties could impose a license tax to enforce such regulation. A county levied a license fee of \$50 per mobile home lot per year upon all park owners. A trailer company sought a declaratory judgment as to the validity of the fee.<sup>136</sup> After weighing the facts, the court found that the ordinance bore no reasonable relationship to the cost regulation. Consequently, the court held the statute invalid, stating the general criterion for validity. "If it is manifest that the amount imposed is out of proportion to the expenses involved, the ordinance will generally be regarded as a revenue measure and void as a regulation under the police power."<sup>137</sup>

An interesting case which was similarly decided was *County Commissioners of Arnee Arundel County v. English*.<sup>138</sup> After holding that a fee of \$30 per year per trailer levied upon the park owner was invalid as a license fee enacted under the police power because it was unrelated to the cost of regulation, the court considered classifying the fee as a use tax. The court reasoned that since the fee was imposed upon the *only* use to which the mobile home could be used, the fee could not be classified as a use tax. Consequently, the court held that the fee must be treated as a property tax and was invalid because not levied on an *ad valorem* basis.<sup>139</sup>

There is no theoretical legal objection to the license fee approach when the fee imposed bears a reasonable relationship to the cost of regulation. One serious warning, however, must be sounded. A narrow interpretation of cost of regulation might emasculate the license fee approach. The mobile home owner should pay his fair share of all municipal services, regardless of whether he actually benefits from such services. If cost of regulation is defined to encompass only the costs of services which the municipality actually performs for the mobile home dweller and excludes the costs of other services, such as the expense of operating schools and hospitals which the average mobile home owner may not use, the resulting license fee will discriminate in favor of the mobile home owner. A more reasonable and liberal interpretation of cost of regulation—one that

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135. *County Bd. of Sup'rs. v. American Trailer Co.*, 193 Va. 72, 68 S.E.2d 115 (1951).

136. *Id.* at 73-74, 68 S.E.2d at 117.

137. *Id.* at 76, 68 S.E.2d at 118. *Accord*, *Hoffman v. Borough of Neptune City*, 137 N.J.L. 485, 60 A.2d 798 (1948).

138. *County Com'rs of Arnee Arundel County v. English*, 35 A.2d 135 (Md. 1943).

139. *Contra*, *Rapa v. Haines*, 64 Ohio Abs. 535, 101 N.E.2d 733 (1951).

includes school and hospital expenses, for example, within its definition—should produce a license fee rate which is fair and equitable to all residents of a municipality. If the license fee statute or ordinance is interpreted to insure that mobile home dwellers pay their fair share of the cost of municipal services, the license fee approach provides a fair and equitable approach to mobile home taxation.

#### CONCLUSION

Summarizing, the real property, personal property, and license fee structures are inappropriate for the levying of an equitable tax upon the mobile home. The mobile home is not "real property" and characterizing it as such creates a needless legal fiction. Dispute over who should pay the real property tax imposed upon the mobile home also makes the real property approach inappropriate. Because the mechanical aspects of a personal property tax are not efficient when applied to mobile home taxation, the personal property approach is likewise inappropriate. Finally, the license fee approach is inadequate because of the tendency to interpret "license fee" so narrowly that the mobile home owner does not pay his fair share of the tax burden.

While there is nothing inherently equitable about a privilege tax, such a tax can most easily address itself to the particular problems of taxing a mobile home. By adopting a tax structure which focuses strictly on the mobile home, any state can avoid the problems associated with the real, personal and license fee approaches. The privilege tax is designed only for mobile home taxation purposes and contains (if properly drafted) appraisal, depreciation and rate schedules appropriate for the mobile home.

Each state privilege tax contains varied and diverse provisions. Indeed, such diversity is one of the strengths of the privilege tax structure. Each state is able to adopt tax provisions in accordance with the financial conditions of its residents. Each state is able to adopt an efficient and equitable tax peculiarly appropriate to its mobile home residents. It is beyond the scope of this comment to discuss most or even many of the panoply of provisions which have been or could be adopted by the various states. It is recognized, however, that a poorly drafted statute may discriminate against or in favor of mobile home residents, or otherwise be inequitable. Such discriminatory and inequitable provisions are subject to attack by courts and legislatures of the various states but are beyond the scope of this comment. Rather, the comment concludes with some observations concerning the properly drafted and equitable privilege tax structure.

First, the privilege tax approach imposes a *tax* and not a license fee upon the mobile home owner. This tax imposition guarantees that the governing body may collect revenue from the mobile home owner to be used for the operation of all municipal services, regardless of whether or not such service can be classified as a cost of regulating the mobile home. Thus, needless controversy and litigation concerning the interpretation of cost of regulation are avoided. The mobile home owner will pay his share of the *tax* burden.

Second, the privilege tax, because it is a special tax imposed only on the mobile home, can best provide for adequate assessment and enforcement procedures suited to the nature of a mobile home. Thus, the problem of trying to administer assessment procedures which are adequate for assessing other types of property but inefficient and unjust when applied to the assessment of a mobile home is eliminated. The Colorado privilege tax, for example, provides that the mobile home shall be assessed at 75 per cent of its retail delivered price minus a deduction of 20 per cent which is allowed for cost of household furnishings.<sup>140</sup> The recognition of a furnishings deduction is an equitable provision which is particularly suitable to mobile homes and consequently most likely to be enacted only by a privilege tax type statute. Illinois, in its privilege tax statute, eliminates many troublesome assessment problems by imposing a tax of ten to fifteen cents per square foot of floor space upon the owner of the mobile unit.<sup>141</sup> This method avoids many complicated assessment computations yet guarantees that the owner of the larger and therefore more expensive home pays a larger tax than the owner of a smaller and less expensive unit. Thus, some degree of horizontal equity is established without reference to factory suggested prices which, in the case of the mobile home, are not only difficult to acquire but also inaccurate indications of the true value of the home.

Finally, the legislature which enacts the privilege tax either expressly or impliedly recognizes that the mobile home is a particular and distinct type of personal property. By designating a mobile home as a special type of property, the legislature avoids the development of a needless legal fiction as to the nature of the mobile housing unit. More importantly, the legislature which accepts the fact that mobile homes are a special kind of property takes the initial step towards recognition of the fact that mobiles provide decent and safe housing for many persons who could not otherwise afford it. Such a legislature will realize that if the

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140. COLO. REV. STAT. ANN. § 13-3-5(16)(17) (Supp. 1969).

141. ILL. REV. STAT. ch. 111½ § 725 (1971).

mobile home is to continue to fulfill this function, it must be subject only to reasonable and fair methods of taxation. Consequently, such a legislature will conclude that any tax which makes it impossible for the low or lower medium income family to own a mobile home is unreasonable; no tax which might accomplish such a result will be enacted by this legislature. Such legislatures are needed to help keep the cost of mobile home living reasonable, for, as Washington economic consultant Robinson Newcomb observes, "[m]obile homes have saved the day for us . . . if it weren't for mobiles, our housing problems would be much worse than they already are."<sup>142</sup>

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142. *Mayer, supra* note 120, at 126.